

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RECEIPT # 65527
AMOUNT \$ 250.00
SUMMONS ISS. 4
LOCAL RULE # 1
WAIVER OF FEES
MCF ISSUED 7-11-05
NO 120 OR 121 7-11-05
BY DPTY CLK [Signature]
DATE 7-11-05

WILLIAM STEFANIAK and
JANICE STEFANIAK,

Plaintiffs

v.

VOYAGER III, LLC,
WATER TRANSPORTATION
ALTERNATIVES, INC.,
NEW ENGLAND AQUARIUM
CORPORATION, and
NEW ENGLAND AQUARIUM
MARINE LIFE CENTER, INC.,

Defendants

COMPLAINT and
DEMAND FOR JURY TRIAL

CIVIL ACTION NO. _____

05-11465 MLW

Referred to MJ Leo T. Sordani

INTRODUCTION

1. This is an action for maritime personal injuries which occurred on or about July 14, 2004 while the plaintiff, William Stefaniak, was a passenger aboard the M/V VOYAGER III, which was owned, operated, chartered and/or controlled by the defendants. The plaintiffs assert a cause of action against each defendant for personal injuries based upon negligence, loss of consortium, and a cause of action for punitive damages, all claims brought under the General Maritime Law.

JURISDICTION AND VENUE

2. This is a maritime case being brought pursuant to 28 U.S.C. § 1333(1).
3. Venue is proper pursuant to 28 U.S.C. § 1391(c).

PARTIES

4. The plaintiff, WILLIAM STEFANIAK, is of legal age and resides in Leominster, Massachusetts.
5. The plaintiff, JANICE STEFANIAK, is of legal age and resides with her husband in Leominster, Massachusetts.
6. The defendant, VOYAGER III, LLC, is a company duly organized in the Commonwealth of Massachusetts with its principal place of business at 703 Washington Street in Quincy, Massachusetts and, at all relevant times, owned, maintained, financed, managed, operated, chartered and/or controlled the water vessel known as the M/V VOYAGER III having a Vessel Identification Number 1077034.
7. The defendant, WATER TRANSPORTATION ALTERNATIVES, INC., is a Delaware corporation with its principal place of business at 116 E. Howard Street in Quincy, Massachusetts and, at all relevant times, both operated the New England Aquarium Whale Watch and maintained, managed, operated, chartered and/or controlled the water vessel known as the M/V VOYAGER III having a Vessel Identification Number 1077034.
8. The defendant, NEW ENGLAND AQUARIUM CORPORATION, is a nonprofit corporation duly organized in the Commonwealth of Massachusetts with its principal place of business at Central Wharf in Boston, Massachusetts and, at all relevant times, both managed, maintained, operated, and controlled the New England Aquarium Whale Watch and maintained, managed, operated, chartered and/or controlled the water vessel known as the M/V VOYAGER III having a Vessel Identification Number 1077034.
9. The defendant, NEW ENGLAND AQUARIUM MARINE LIFE CENTER, INC., is a nonprofit corporation duly organized in the Commonwealth of Massachusetts with its

principal place of business at One Central Wharf in Boston, Massachusetts and, at all relevant times, both managed, maintained, operated, and controlled the New England Aquarium Whale Watch and maintained, managed, operated, chartered and/or controlled the water vessel known as the M/V VOYAGER III having a Vessel Identification Number 1077034.

FACTUAL ALLEGATIONS

10. On July 14, 2004, the plaintiff, WILLIAM STEFANIAK, was a passenger on a whale watching excursion aboard the M/V VOYAGER III which was transporting passengers for hire for purposes of whale watching. The said vessel was in navigable waters and while the plaintiff was in the exercise of due care, he sustained serious personal injuries due to the negligence of the defendants, their agents, servants and/or employees.

COUNT I

William Stefaniak v. Voyager III, LLC (General Maritime Law – Negligence)

11. Paragraphs 1-10 are realleged and incorporated herein by reference.
12. The injuries sustained by the plaintiff, William Stefaniak were due to no fault of his own, but were caused by the negligence of the defendant.
13. As a result of said injuries, the plaintiff, William Stefaniak has suffered great pain of body and anguish of mind, incurred medical and hospital expenses, loss of time from his usual work, and has suffered and will suffer other damages as will be shown at the trial of this matter.

14. This cause of action is brought for Negligence under the General Maritime Law.

REQUEST FOR RELIEF

15. That this court, under Count I, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
16. For such other relief as this court deems appropriate.

COUNT II

William Stefaniak v. Water Transportation Alternatives, Inc.
(General Maritime Law – Negligence)

17. Paragraphs 1-16 are realleged and incorporated herein by reference.
18. The injuries sustained by the plaintiff, William Stefaniak were due to no fault of his own, but were caused by the negligence of the defendant.
19. As a result of said injuries, the plaintiff, William Stefaniak has suffered great pain of body and anguish of mind, incurred medical and hospital expenses, loss of time from his usual work, and has suffered and will suffer other damages as will be shown at the trial of this matter.
20. This cause of action is brought for Negligence under the General Maritime Law.

REQUEST FOR RELIEF

21. That this court, under Count II, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
22. For such other relief as this court deems appropriate.

COUNT III

William Stefaniak v. New England Aquarium Corporation
(General Maritime Law – Negligence)

23. Paragraphs 1-22 are realleged and incorporated herein by reference.
24. The injuries sustained by the plaintiff, William Stefaniak were due to no fault of his own, but were caused by the negligence of the defendant.
25. As a result of said injuries, the plaintiff, William Stefaniak has suffered great pain of body and anguish of mind, incurred medical and hospital expenses, loss of time from his usual work, and has suffered and will suffer other damages as will be shown at the trial of this matter.
26. This cause of action is brought for Negligence under the General Maritime Law.

REQUEST FOR RELIEF

27. That this court, under Count III, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
28. For such other relief as this court deems appropriate.

COUNT IV

William Stefaniak v. New England Aquarium Marine Life Center, Inc.
(General Maritime Law – Negligence)

29. Paragraphs 1-28 are realleged and incorporated herein by reference.
30. The injuries sustained by the plaintiff, William Stefaniak were due to no fault of his own, but were caused by the negligence of the defendant.

31. As a result of said injuries, the plaintiff, William Stefaniak has suffered great pain of body and anguish of mind, incurred medical and hospital expenses, loss of time from his usual work, and has suffered and will suffer other damages as will be shown at the trial of this matter.
32. This cause of action is brought for Negligence under the General Maritime Law.

REQUEST FOR RELIEF

33. That this court, under Count IV, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
34. For such other relief as this court deems appropriate.

COUNT V

Janice Stefaniak v. Voyager III, LLC
(General Maritime Law – Loss of Consortium)

35. Paragraphs 1-34 are realleged and incorporated herein by reference.
36. At all times relevant herein the plaintiff, Janice Stefaniak, was married to the plaintiff, William Stefaniak.
37. As a result of the plaintiff, William Stefaniak's injury, Janice Stefaniak has been deprived of her husband's services, support, society, affection, companionship and familial relations.
38. This cause of action is brought for Loss of Consortium under the General Maritime Law.

REQUEST FOR RELIEF

39. That this court, under Count V, enter judgment in favor of the plaintiff, Janice Stefaniak, against the defendant.
40. For such other relief as this court deems appropriate.

COUNT VI

Janice Stefaniak v. Water Transportation Alternatives, Inc.
(General Maritime Law – Loss of Consortium)

41. Paragraphs 1-40 are realleged and incorporated herein by reference.
42. At all times relevant herein the plaintiff, Janice Stefaniak, was married to the plaintiff, William Stefaniak.
43. As a result of the plaintiff, William Stefaniak's injury, Janice Stefaniak has been deprived of her husband's services, support, society, affection, companionship and familial relations.
44. This cause of action is brought for Loss of Consortium under the General Maritime Law.

REQUEST FOR RELIEF

45. That this court, under Count VI, enter judgment in favor of the plaintiff, Janice Stefaniak, against the defendant.
46. For such other relief as this court deems appropriate.

COUNT VII

Janice Stefaniak v. New England Aquarium Corporation
(General Maritime Law – Loss of Consortium)

47. Paragraphs 1-46 are realleged and incorporated herein by reference.

48. At all times relevant herein the plaintiff, Janice Stefaniak, was married to the plaintiff, William Stefaniak.
49. As a result of the plaintiff, William Stefaniak's injury, Janice Stefaniak has been deprived of her husband's services, support, society, affection, companionship and familial relations.
50. This cause of action is brought for Loss of Consortium under the General Maritime Law.

REQUEST FOR RELIEF

51. That this court, under Count VII, enter judgment in favor of the plaintiff, Janice Stefaniak, against the defendant.
52. For such other relief as this court deems appropriate.

COUNT VIII

Janice Stefaniak v. New England Aquarium Marine Life Center, Inc.
(General Maritime Law – Loss of Consortium)

53. Paragraphs 1-52 are realleged and incorporated herein by reference.
54. At all times relevant herein the plaintiff, Janice Stefaniak, was married to the plaintiff, William Stefaniak.
55. As a result of the plaintiff, William Stefaniak's injury, Janice Stefaniak has been deprived of her husband's services, support, society, affection, companionship and familial relations.
56. This cause of action is brought for Loss of Consortium under the General Maritime Law.

REQUEST FOR RELIEF

57. That this court, under Count VIII, enter judgment in favor of the plaintiff, Janice Stefaniak, against the defendant.
58. For such other relief as this court deems appropriate.

COUNT IX

William Stefaniak v. Voyager III, LLC
(General Maritime Law – Punitive Damages)

59. Paragraphs 1-58 are realleged and incorporated herein by reference.
60. The conduct of the defendant demonstrated willful, wanton and reckless behavior and a conscious disregard for the plaintiff, William Stefaniak's rights and safety.
61. This cause of action is brought under the General Maritime Law for punitive damages.

REQUEST FOR RELIEF

62. That this court, under Count IX, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
63. For such other relief as this court deems appropriate.

COUNT X

William Stefaniak v. Water Transportation Alternatives, Inc.
(General Maritime Law – Punitive Damages)

64. Paragraphs 1-63 are realleged and incorporated herein by reference.
65. The conduct of the defendant demonstrated willful, wanton and reckless behavior and a conscious disregard for the plaintiff, William Stefaniak's rights and safety.

66. This cause of action is brought under the General Maritime Law for punitive damages.

REQUEST FOR RELIEF

67. That this court, under Count X, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
68. For such other relief as this court deems appropriate.

COUNT XI

William Stefaniak v. New England Aquarium Corporation
(General Maritime Law – Punitive Damages)

69. Paragraphs 1-68 are realleged and incorporated herein by reference.
70. The conduct of the defendant demonstrated willful, wanton and reckless behavior and a conscious disregard for the plaintiff, William Stefaniak's rights and safety.
71. This cause of action is brought under the General Maritime Law for punitive damages.

REQUEST FOR RELIEF

72. That this court, under Count XI, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
73. For such other relief as this court deems appropriate.

COUNT XII

William Stefaniak v. New England Aquarium Marine Life Center, Inc.
(General Maritime Law – Punitive Damages)

74. Paragraphs 1-73 are realleged and incorporated herein by reference.

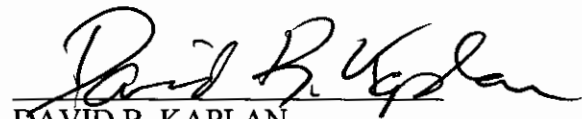
75. The conduct of the defendant demonstrated willful, wanton and reckless behavior and a conscious disregard for the plaintiff, William Stefaniak's rights and safety.
76. This cause of action is brought under the General Maritime Law for punitive damages.

REQUEST FOR RELIEF

77. That this court, under Count XII, enter judgment in favor of the plaintiff, William Stefaniak, against the defendant.
78. For such other relief as this court deems appropriate.

THE PLAINTIFFS REQUEST TRIAL BY JURY ON ALL COUNTS

Respectfully submitted,
WILLIAM STEFANIAK and
JANICE STEFANIAK
By their attorney,



DAVID B. KAPLAN
THE KAPLAN/BOND GROUP
88 Black Falcon Avenue, Suite 301
Boston, MA 02210
(617) 261-0080
BBO# 258540

Dated: July 11, 2005

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

WILLIAM STEFANIAK and JANICE STEFANIAK

(b) County of Residence of First Listed Plaintiff WORCESTER
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

THE KAPLAN/BOND GROUP, 88 Black Flacon Ave., Suite 301,
Boston, MA 02210, (617) 261-0080

DEFENDANTS: Voyager III, LLC; Water Transportation

Alternatives, Inc.; New England Aquarium Corporation, New
England Aquarium Marine Life Center, Inc.

County of Residence of First Listed Defendant NORFOLK
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys Known

05-11465 MLW**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:
Maritime personal injury

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

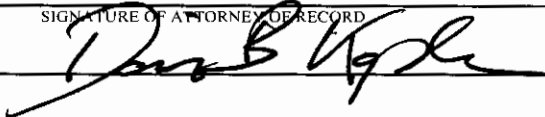
JUDGE

DOCKET NUMBER

DATE

07/11/2005

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) WILLIAM STEFANIAK v. VOYAGER III, LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. **05-11465 MLW**
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☐ NO ☒A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME DAVID B. KAPLANADDRESS 88 Black Falcon Avenue, Suite 301, Boston, MA 02210TELEPHONE NO. (617) 261-0080